

BEFORE THE
POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF
GLEN R. RAMSEY dba MAPLE LEAF
FARMS, INC.,

Appellant,

V.

SPOKANE COUNTY AIR POLLUTION
CONTROL AUTHORITY,

Respondent.

PCRB No. 81-160

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW AND
ORDER

This matter, the appeal of a \$150 civil penalty for alleged violation of open burning laws and regulations of the State of Washington issued by Spokane County Air Pollution Control Authority, came on for informal hearing before the Pollution Control Hearings Board on March 16, 1982, in Spokane, Washington. Seated for and as the Board were David Akana and Gayle Rothrock (presiding). The proceedings were tape recorded.

Appellant Glen R. Ramsey represented himself. Respondent agency was represented by its attorney Robert Binger.

1 Witnesses were sworn and testified. Exhibits were admitted and
2 examined. Oral argument was heard. From this the Pollution Control
3 Hearings Board makes these

4 FINIDNGS OF FACT

5 I

6 Appellant Glen R. Ramsey is the owner-operator of Maple Leaf
7 Farms, Inc., of Rockford, Washington, in Spokane County. Maple Leaf
8 Farms raises peas, lentils, and grass seed. In late summer and early
9 fall, the fields are burned for pest control, straw disposal, and
10 stimulating seed generation in its grass seed operation.

11 Spokane County Air Pollution Control Authority (SCAPCA),
12 respondent agency, issued a seasonal grass seed burning permit to
13 Maple Leaf Farms in early August, 1981, which was valid from August 17
14 to October 15 of that year, provided the permit holder abide by all
15 three permit conditions in its five-parcel (270 acres altogether)
16 burning program. SCAPCA has been issuing such permits to Glen Ramsey
17 since 1971, and there are no recorded violations for the period
18 1971-1980, inclusive.

19 II

20 Elder Road and State Highway 27 bisects the northwest corner of
21 appellant's property, an area with a sizeable amount of acreage
22 devoted to grass seed production. Permitted burning is more limited
23 on the north side of Elder Road, as there is a tendency to more
24 "smokiness" in the air and the wind sometimes blows into the populated
25 area of Liberty Lake.

26 FINAL FINDINGS OF FACT,
27 CONCLUSIONS OF LAW & ORDER
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1 Grass seed growers in the Spokane area face a variety of
2 challenges with winds and weather, and with settlements and towns
3 dotting the landscape. Thus, SCAPCA, the affected fire districts, and
4 the grass seed farmers cooperate to get daily clearance for burning
5 under known and anticipated wind conditions for certain limited hours
6 of the day. This cooperation is effected to meet the spirit and
7 intent of state law and regulation, but is not fully reflected in the
8 burning permit.

9 III

10 On the afternoon of September 8, 1981, a SCAPCA inspector on
11 routine patrol in the Rockford area noticed fires in the Northwest
12 Quarter of Section 8, Township 23, Range 45 East. He arrived at the
13 site by State Highway 27 and Elder Road and noticed people lighting
14 bluegrass stubble acreage at 2:00 p.m. Authorized torching of fires
15 for that day extended only from 10:00 a.m. to 1:00 p.m. SCAPCA's
16 Director had called each of the seven fire districts that morning
17 about 9:20 a.m. to give burning hour limitations, based on available
18 information on wind behavior.

19 The inspector was unable to learn directly that afternoon the
20 identity of the field crew or the property owner. The property
21 ownership having been tracked down by the next day, the SCAPCA
22 Director authorized issuance of a notice of violation of grass seed
23 burning regulations and an accompanying civil penalty of \$150.

24 IV

25 Appellant contends he and his 32-man fire crew were victims of

1 changing winds (towards farm buildings) about 12:25 p.m. and whirlwind
2 jumps of their fireguards into a pasture area of 100 acres they did
3 not intend to burn. Feeling he wanted to use his fire crew a full day
4 because of the expense he incurred in contracting for their labor, the
5 pick-up trucks, and the three igniters, appellant kept the stubble
6 field lighting going past 2:00 p.m. Appellant did not call the fire
7 district or SCAPCA to report the circumstances and ask for advice or
8 an extension. Around 3:00 p.m. the crew brought the fires under
9 control.

10 V

11 Any Conclusion of Law which is deemed a Finding of Fact is hereby
12 adopted as such.

13 From these Findings of Fact the Board comes to these

14 CONCLUSIONS OF LAW

15 I

16 The Legislature of the State of Washington has provided, in
17 pertinent part, that:

18 Any person who proposes to set fires in the course of
19 the following:

- 20 (1) Weed abatement,
21 (2) Instruction in methods of fire fighting (except
22 forest fires), or
23 (3) Disease prevention relating to agricultural
24 activities, shall, prior to carrying out the same,
25 (must) obtain a permit from an air pollution control
26 authority...

27 Provided, That all permits so issued shall be
conditioned to insure that the public interest in
air, water, and land pollution and safety to life and
property is fully considered. RCW 70.94.650

1It is hereby declared to be the policy of this
2 state that strong efforts should be made to minimize
3 adverse effects on air quality from the open burning
4 of field and turf grasses grown for seed. To such
5 end this section is intended to promote the
6 development of economical and practical alternate
7 agricultural practices to such burning, and to
8 provide for interim regulation of such burning until
9 practical alternates are found....

6 (3) Until approved alternates become available, the
7 department or the authority may limit the number of
8 acres on a pro rata basis among those affected for
9 which permits to burn will be issued in order to
10 effectively control emissions from this source.

9 (4) Permits issued for burning of field and turf
10 grasses may be conditioned to minimize emissions
11 insofar as practical, including denial of permission
12 to burn during periods of adverse meteorological
13 conditions. RCW 70.94.656 (Emphasis added.)

12 The state government and local air pollution control authorities
13 have provided implementing regulations which declare, in pertinent
14 part:

15 (1) No open burning of field or forage grasses,
16 or turf grasses shall be undertaken unless a permit
17 has been obtained from the department or from an
18 activated air pollution control authority, as
19 appropriate. The issuance of permits shall be
20 governed by consideration of air quality conditions
21 in the area affected by the proposed burning, the
22 time of year, meteorological conditions, the size and
23 duration of the proposed burning activity, the
24 applicant's need to carry out such burning, and the
25 public's interest in the environment. Permits will
26 be conditioned to minimize air pollution effects as
27 far as practical. Until approved alternatives become
28 available, the department or the authority may limit
29 the number of acres, on a pro rata basis, among those
30 affected for which permits to burn will be issued in
31 order to control emissions from this source. (WAC
32 173-430.)

24 Appellant's failure to observe the rational time limits set for
25

1 torching a fire in a commercial grass stubble field in Spokane County
2 on September 8, 1981, and further allowing and maintaining open fires
3 until 3:00 p.m. is not a mark of cooperation amongst growers, fire
4 districts, and SCAPCA nor a sign of compliance with the spirit of
5 state law and regulations. The action was a violation of SCAPCA's
6 management practices for that day but does not reach as far as a
7 direct violation of explicit permit conditions.

8 II

9 Respondent SCAPCA acts under authority of RCW 70.94 and WAC
10 173-430 in regulating days, hours, and geographical locations of turf
11 grass fires, in cooperation with Spokane County fire districts.
12 SCAPCA also operates within its authority and responsibility in
13 enforcing pertinent state laws and regulations. However, standard
14 SCAPCA burning permit condition language is generalized and lacking in
15 the kind of clarity, exactness, and expressions of joint
16 responsibility which would make permit condition enforcement possible
17 in cases of this nature. Accordingly, the \$150 civil penalty should
18 be vacated.

19 III

20 Any Finding of Fact which is deemed a Conclusion of Law is hereby
21 adopted as such.

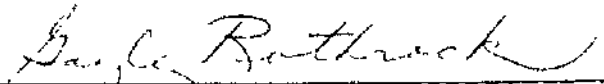
22 From these Conclusions, the Board enters this
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ORDER

Spokane County Air Pollution Control Authority's Notice of Violation and \$150 civil penalty of September 25, 1981, issued to Maple Leaf Farms, Inc., is set aside.

DONE this 29th day of April, 1982, in Lacey, Washington.

POLLUTION CONTROL HEARINGS BOARD


GAYLE ROTHROCK, Vice Chairman


DAVID AKANA, Lawyer Member